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**TRIAL REPORT**  
**SUMMARY/TESTIMONY/PROJECTION**

CASE NAME: Cipollone DATE: 19-Apr-88 p.m. PAGE 1 OF 5

**SUMMARY:**

Edell continued his cross examination of Dr. Sommers this afternoon, concentrating on CTR grants, research recommendations and Sommers' general causation opinions.

WITNESS: Dr. Sheldon C. Sommers

IDENTITY: Defendants' Specific Causation Expert and Former Scientific Director of CTR

EXAMINER: CROSS: Marc Edell TIME: 2 hrs. 05 min.

**TESTIMONY:**

Edell resumed his cross-examination of Sommers by continuing to confront him with various CTR documents which suggested that scientists "friendly to TIRC" received special consideration in the grants and certain CTR grantees such as Berkson and Rosenblatt were used in PR activities on television. In most instances, Sommers was not familiar with the particular documents displayed by Edell including the 1953 Hill & Knowlton proposal for the formation of TIRC and a document which claimed the two purposes of TIRC were research and public relations. Sommers testified that after he joined CTR, no scientific director was ever involved in public relations activities.

Edell then reviewed various types of research areas funded by CTR which he suggested were not directly related to cigarette smoking. Sommers tried to explain that some of the research findings were not the direct results of the funded research. Edell also tried to suggest that Zahn, CTR's public relations counsel, made recommendations for research projects but Sommers explained that most of the areas for research suggested by Zahn had been funded long before he made the suggestions. Sommers acknowledged that, in preparation for his trial testimony, he had reviewed Spears' letter to Judge criticizing CTR by suggesting that its

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projects had not been selected against specific scientific goals but rather for various public relations, political relations, and to position for litigation.

Edell then attempted to show Sommers a 1970 TI ad titled "The Question About Smoking and Health is Still a Question" to demonstrate that TI made reference to CTR research results in its advertising. After a lengthy sidebar during which preemption arguments were made, the judge permitted the ad to be shown to Sommers and the jury but Sommers said he had never seen it before.

Edell next confronted Sommers with one of Little's comment sheets on a grant application in 1969 which suggested that CTR should now begin telling grantees what CTR wanted the researcher to do. Sommers denied that there was ever a policy of telling grantees what results to obtain and explained that Little was probably explaining that when a well-qualified scientist made an application for a project outside the scope of CTR's area, the scientist could perhaps be guided to a more closely related area that could be funded.

Edell then had Sommers review his opinions on general causation to the effect that it had not been "proven" and then used a chart of paper to draw a line. At one end he placed the words "no evidence and 0%" and at the other end he put "proven and 100%." Edell then asked Sommers to mark on the line where his opinion on general causation fell. Sommers initially replied that he did not think that he had enough knowledge to even put a line down much less make a mark on it and later Sommers claimed that he would have to list the many factors to be considered in evaluating the evidence in order to make such a conclusion. At this point, Edell offered to permit Sommers to make any necessary calculations and the afternoon break was taken to permit him to do so. Upon returning, Edell made a point of the fact that Sommers had consulted note cards and gone into the audience to take some notes from a briefcase. Sommers gladly showed Edell (and tried to show the jury directly) the notes he had retrieved from his briefcase but the judge ordered Sommers to return to the stand. Edell then changed his questions slightly (show us on the chart where the "relationship" is) and there were vigorous objections since Sommers would conclude that epidemiology has proven a relationship but not a cause. After additional discussion, Sommers was allowed to mark on the chart in response to Edell's answer. He explained that lung cancer is four different diseases and that he could answer easily with respect to each separate type but he had difficulty trying to add them to come up with an answer. He then testified that for small cell there was "probable cause" and marked it at 45-55%. He rated adenocarcinoma as 20%, squamous cell at 25% and large cell at "almost no chance." Sommers noted that Edell did not ask him to rate ATC. Edell then Sommers confirm his deposition

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testimony that he was of the opinion that arsenic is a lung carcinogen in humans and had Sommers acknowledge that he formed this opinion based solely on the literature and limited research without any animal inhalation studies. He then had Sommers comment on the fact that, with respect to cigarette smoking and lung cancer, there were multiple areas of proof, including epidemiology, chemistry, animal experiments, inhalation studies and the dose response relationship. Sommers acknowledged that the relationship had been demonstrated by epidemiology and raised some questions as to the classification by the SG of certain smoke components as carcinogenic. He explained that the current thinking on cancer causation is that the first step is "initiation and if this is the only step that is achieved, there will never be a cancer. He then explained that some of the chemicals listed by the SG were cocarcinogens which "you could paint on a mouse till the cows come home and you would have no tumor without the first stage of initiation." Edell tried to refer to the 1982 Surgeon General's Report and its conclusion that inhalation studies had shown squamous cell tumors in the lung but Sommers pointed out that most were found in the upper respiratory tract or larynx rather than in the lungs. With respect to the dose response relationship, Sommers argued that the SG's conclusion that five to ten years after stopping, the risk of lung cancer drops off considerably disproves the claim that smoking is a carcinogen because if it were an initiator, the cell damage would be irreversible.

Edell concluded the day's examination by asking Sommers "What is the cause of lung cancer?" Sommers based his response on the literature and began by suggesting that it was something inherited through families. Edell also had him discuss the fact that cigarette smoking has been identified as mutagen but Sommers explained that to be a mutagen is not the same as being a carcinogen. Edell asked permission to end his examination ten minutes early today because he was going to enter into a new area and the judge agreed.

After the jury was excused, Sarokin announced that he was "hopeful" that he would have an opinion on defendants' motion for directed verdict by Thursday morning. Bleakley also filed a brief request for admissions from plaintiff and requested a shortening of the time to respond to May 9.

#### ASSESSMENT:

After the jury left for the afternoon break and during the period when Sommers was supposed to do his calculations for the chart, Edell asked the judge that counsel be instructed not to talk to Sommers. Sarokin tried to obtain the voluntary cooperation of defense counsel but Sirridge advised that he would not discuss substantive matters with Sommers but reserved the right to discuss

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his physical condition and well-being. As a matter of principle, Cohn would not agree not to talk to Sommers since Cohn has made the point that Sarokin never imposed such a rule during Edell's case. When counsel would not voluntarily agree, Sarokin ordered Sommers not to speak to any attorneys during the break. When the jury returned, Sommers offered to tell the judge whether he had complied with the order but the judge did not want to hear it. Apparently Sommers was going to report that Edell had spoken to him during the break. Edell also tried to make a point that Sommers had gone into the audience to consult notes during the break and when Sommers appeared not to understand proper court procedure in this regard, Edell suggested that he was an experienced witness having testified 18 times since 1950. However, Sommers said he had never testified "in a courtroom as nice as this" at which point Sarokin said "or with a judge as nice as this" and the jury laughed.

Sommers was frustrated by Edell's use of the "proof line" and by Edell's slight (and perhaps unknowing) changing of the wording of his questions. At one point Edell almost physically prevented Sommers from marking on the chart to explain his answer and during a sidebar Sommers pounded on the witness stand as a show of his frustration.

On at least four occasions this afternoon Edell proceeded to show the jury blowups of exhibits without first showing defense counsel and providing them with a copy. In each instance, Edell feigns surprise that defense counsel do not know which exhibit he is referring to or claims that he "forgot." When Sirridge asked for the fourth time to see the exhibit before it was shown to the jury he looked at Sarokin and said "Need I again object to this procedure?" and Sarokin made no reply.

Sommers continues to provide fairly good explanations of his positions when permitted by Edell. Edell has been courteous to Sommers but has on occasion insisted that Edell be permitted to finish his questions before Sommers answers.

#### PROJECTION:

It is anticipated that Walters will cross Sommers on his specific causation opinions and that, combined with redirect, could take a substantial part of tomorrow. Furst is still scheduled to testify when Sommers concludes.

Monday, April 25 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

April 26 through April 29 -- Court will not be in session; Judge Sarokin will be out of town. No reports will be transmitted.

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Monday, May 9 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

Friday, May 13 -- Court will not be in session; reason unknown. No report will be transmitted.

Monday, May 16 -- Court will not be in session; reason unknown. No report will be transmitted.

Monday, May 23 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

Monday, May 30 -- Court holiday -- Memorial Day. No report will be transmitted.

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